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FACSIMILE MESSAGE

To: Director of the U.S. Patent and Trademark Office **FAX NO.: (703) 308-2742**

Technology Group 3700, Art Unit 3764

Date: December 15, 2003 **Number of Pages** (including this cover): 16

Re: Applicant: David W. Perrego
Serial No.: 09/740,169
Filed: December 19, 2000
Title: VERTICAL TRACTION ASSEMBLY AND METHOD

The following document to follow:

PETITION UNDER 37 C.F.R. 1.182 TO ENTER APPLICANT'S AMENDMENT AFTER FINAL

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NFM:vra

I hereby certify that this document, and any paper referred to as being transmitted herewith, is being facsimile transmitted to: Commissioner for Patents, Alexandria, VA 22313 on December 15, 2003.

By: _____

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#12|C (NE)

Docket No.: 416-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	David W. Perrego	) Law Office 3764
Serial No.:	09/740,169	) Trademark Attorney: Quang Thanh
Filed:	December 19, 2000	)
Title:	VERTICAL TRACTION ASSEMBLY AND METHOD	)

Honorable Commissioner
for Patents and Trademarks
Washington, D.C. 20231

Via Facsimile Transmission December 15, 2003

PETITION UNDER 37 C.F.R. 1.182 TO ENTER APPLICANT'S AMENDMENT AFTER FINAL

Sir:

Applicant hereby requests the Director, pursuant 37 C.F.R. § 1.182, to review the examiner's October 30, 2003 refusal to enter his amendments made after final rejection because "they raise new issues that would require further consideration and/or search."

More specifically, the examiner states that the "amendment has changed the scope of the claims...for example in claim 1 adding 'standing frame means' and 'depend downwardly,' and in claim 2 adding "assuming said vertical traction suspension position' are further limitations never before considered."

This petition is timely filed within two (2) months of October 30, 2003. Please charge the requisite petition fee of $130.00 pursuant 37 C.F.R. § 1.17(h) and any additional fees that may be required to Deposit Account No. 13-1720.

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The "standing frame means" and "depend downwardly" limitations previously considered.

That the proposed "amendment has changed the scope of the claims" is irrelevant. For the purpose of any amendment is to more particularly point out and distinctly claim the invention under 35 U.S.C. § 112 that changes the scope of a claim. The question is whether or not issues related to the two proposed limitations were previously considered in the context of Applicant's earlier claimed invention. Claims 1 and 7 as presented after the first office action dated May 8, 2002 and considered by the examiner before his final rejection read:

1. A vertical traction assembly for using gravity to stretch a person's spine, said assembly comprising:

a) frame means and torso harness means coupled to depend from said frame means,

b) said harness means being effective to maintain a person in a vertical traction suspension position after the person dons said harness means, and

d) traction force focusing means attached to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position.

7. An assembly as defined in claim 1 wherein

said frame means is free standing and said harness means depends downwardly from said frame means,

said focused traction force means being effective to derive said focused traction pressure from a portion of the weight of the person in said traction position, and

said vertical traction suspension position is a gravity traction suspension position with said person being vertically suspended with the harness means to produce said focused traction pressure.

These claims require the frame means as previously claimed to be "standing" and "harness means" to depend "downwardly from said frame means." For the harness means is "effective to maintain a person in a vertical traction suspension position after the person dons said harness means." The only way a person can be suspended vertically is for the harness means to depend "downwardly" from the frame means. And unlike the prior art mechanisms that require a person to be in a horizontal or inclined relining traction position, a "vertical traction suspension position" necessarily requires use of a "standing" frame means regardless of whether or not it is "free" standing or attached to a vertical wall. Otherwise, the person could not be ***vertically suspended*** as shown in Applicant's Figures 4, 6, and 8,and as found in earlier claim 7. For unless the frame means were "standing," the claim 1 limitation that the "traction force focusing means attached to the frame means" applies a "focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position" would be meaningless.

So proposed claim 1 amendment of adding "standing" to modify "frame means" merely expressly states what is implicitly and inherently required for the frame means to perform its claimed function of supporting the person in a ***vertical traction suspension position***, in addition to having been expressly present in previously considered claim 7. The scope of claims 1-6 , and 8-9 where the "standing" limitation is proposed after final rejection must be read in light of the specification, which discloses no other type of frame means other than a "standing" frame means. The "standing" limitation would merely expressly limit the claims to what has been implicitly and inherently claimed in the originally filed application.

For the foregoing reasons, neither the proposed "standing" or "downwardly" limitations

present any new issues that have not already been considered before issuing Applicant a final rejection of his claims.

In addition to the foregoing reasoning, previously presented claims 2, 5, 9, and 10 read:

2. An assembly as defined in claim 1 wherein

stand means disposed on said frame means includes non-traction receiving surface means on which a person stands for donning the torso harness means before applying said predetermined amount of focused traction pressure.

5. An assembly as defined in claim 1 wherein

stand means is mounted to said frame means and includes said non-traction receiving surface and a partial traction receiving surface on which the person may stand to effect adjustment of the harness means with respect to the frame means and the person's torso before being said person is subjected to a full traction treatment,

said harness means being effective to produce a partial traction treatment pressure equal to a desired percentage of a full traction treatment pressure when the person steps from the non-traction receiving surface to said partial traction receiving surface after donning said harness means.

9. A vertical traction assembly for using gravity to stretch a person's spine, said assembly comprising:

a) frame means and torso harness means coupled to flexibly depend from said frame means, and

b) stand means mounted to said frame means to provide a first non-traction receiving surface on which a person may stand to don the torso harness means and a second partial traction receiving surface on which a person may stand to adjust said harness means with respect to the

person's torso and assembly before the person voluntarily steps to a vertical, gravity traction suspension position,

c) said harness means being effective to suspend the person from the frame means for a partial traction pressure when the person stands on said second partial traction receiving surface after donning said harness means,

e) said partial traction pressure being less than a full traction pressure that is applied to the person who is in said vertical, gravity traction suspension position.

10. A traction assembly for using gravity to stretch a person's spine, said assembly comprising:

a) free standing frame means and harness means effective to releasably gird the torso of a person,

b) said harness means being coupled to flexibly depend from said frame means to suspend the person from the frame means in a gravity traction suspension position, and

c) focused traction force means adjustably connected to the frame means for applying traction pressure directly to a selected location along the spine of the person in said gravity traction suspension position.

Proposed "standing," "downwardly," and "assuming said vertical traction suspension position" limitations in view of previously considered claims 2, 5, 9, and 10.

The following comments are additional reasons why the three limitations noted by the examiner do not raise new issues in this case as alleged.

"Standing" limitation: Previously considered claims include "stand means" "on which a person stands ... before applying said ... focused traction pressure (claim 2);" "...before said person is

subjected to a full traction treatment (claim 5);" and "...before the person voluntarily steps to a vertical, gravity traction suspension position (claim 9)." For a person to use Applicant's assembly with the claimed "stand means," the frame means ***must*** be "standing" for the person to *stand* on the claimed "stand means." The proposed "standing" limitation thus simply expressly states what is implicit and inherent in earlier claims and raises no new issues for further consideration or search.

"Downwardly" limitation: Previously considered claims 9 and 10 require the harness means "to flexibly depend from said frame means" so that the person may don the torso harness and step off the "stand means" to a "vertical, gravity traction suspension position (claim 9);" or "...to suspend the person from the frame means in a gravity traction suspension position (claim 10)." Since the person is obviously stepping downwardly from the stand means for the person to suspend from the frame means, the harness means must necessarily depend "downwardly" from the frame means, not upwardly or horizontally. For a "suspension" position is one in which the person is obviously hanging vertically downwardly.

"Assuming said vertical traction suspension position" limitation: This proposed limitation appears only in claim 2 after final rejection. In context, the limitation reads: "said standing frame means includes non-traction receiving surface means on which a person stands for donning the torso harness means before assuming said vertical traction suspension position and applying said focused traction pressure. This means plus the function limitation recites "surface means on which a person stands for donning the torso harness means before assuming the vertical traction suspension position and applying said focused traction pressure." Similar means plus function limitations are found in previously considered claims 5 and 9.

- Claim 5 limitation: "stand means is mounted to said frame means and includes said non-traction receiving surface and a partial traction receiving surface on which the person may stand to effect adjustment of the harness means with respect to the frame means and the person's torso before said person is subjected to a full traction treatment." Proposed limitation "before assuming said vertical traction suspension position" raises no issue not already considered in this earlier claim 5 limitation.
- Claim 9 limitation: "stand means mounted to said frame means to provide a first non-traction receiving surface on which a person may stand to don the torso harness means and a second partial traction receiving surface on which a person may stand to adjust said harness means with respect to the person's torso and assembly before the person voluntarily steps to a vertical, gravity traction suspension position." Proposed limitation "before assuming said vertical traction suspension position" raises no issue not already considered in this earlier claim 9 limitation.

The foregoing analysis shows the examiner's allegation that the three noted limitations raise new issues is without merit. For they were previously considered as express and/or inherent limitations in earlier claims. So there is no authority for not entering Applicant's amendments after final rejection. Applicant therefore requests entry of its proposed amendments.

Additional Concerns About Issues on Appeal

Drawings of the invention, the Burton, Chitwood, and Nelson references are attached.

In his final rejection of claim 9 over Burton, the examiner says that Burton's "foot stop 93" anticipates Applicant's "stand means" having first and second surfaces that the claim language "may stand." So the examiner ignored Applicant's two specifically claimed "stand means" functions that

the Burton "foot stop 93" is incapable of performing. In view of the examiner's comment, Applicant proposed his claim 9 amendments (with the fourth paragraph incorrectly labeled "e).

9. A vertical traction assembly for using gravity to stretch a person's spine, said assembly comprising:

a) standing frame means and torso harness means coupled to flexibly depend downwardly from said frame means, and

b) said frame means including a first non-traction receiving surface means for supporting a person while standing to don the torso harness means and a second partial traction receiving surface means for supporting a person while standing to adjust said harness means with respect to the person's torso and assembly before the person voluntarily steps to a vertical, gravity traction suspension position,

c) said harness means being effective to suspend the person from the frame means for a partial traction pressure when the person stands on said second partial traction receiving surface means after donning said harness means,

e) said partial traction pressure being less than a full traction pressure that is applied to the person while in said vertical, gravity traction suspension position.

The question is: Why was the examiner's reading of Applicant's claim 9 not indicated in the first office action rather than waiting until the second action that was made Final? For Applicant could have submitted its amendments earlier if the examiner had indicated that his claim language, in the examiner's opinion, did not fulfill the requirements of 35 U.S.C. § 112 so that he could make such a misapplication of the prior art. Consequently, under the circumstances it's impossible for the Applicant to know how the examiner would view any amendment to his claims.

In his first rejection of claim 1, the examiner states that the Chitwood torso means was "effective to maintain a person in traction." After Applicant limited the claim to recite that the torso means was "effective to maintain a person in a vertical traction suspension position" to distinguish the Chitwood ***reclining inclined*** structure, the examiner ignored the further limitation and said that the Chitwood harness is "effective to maintain a person in a vertical traction suspension position after the person dons the harness means."

With respect to Applicant's traction force focusing means "for applying a focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position," the examiner says the Chitwood "head receiving portion 20"performs the same function as Applicant's traction force focusing means that is directed to the spine, not the head . Yet Chitwood's head receiving portion 20 is ***not*** a traction force focusing means as disclosed and claimed. Because Chitwood's head receiving portion 20 does not put a focused traction pressure directly to a selected location along the spine, Applicant does not understand how the examiner sees it acting on "a selected location along the spine of the person," or how the person using the Chitwood assembly is in "a vertical traction suspension position" as in Applicant's assembly.

In short, authority for such a misapplication of Applicant's claim language is not given. So the only explanation is that, in the examiner's opinion, Applicant has another 35 U.S.C. § 112 problem in distinguishing over the prior art. The trouble is that Applicant could go on attempting to put language into his claims, but be forever kept from gaining allowance of his claims. For without knowing by what authority the examiner continues to read the claim limitations directly onto a structure that does no fit the description of a mechanical structure that is disclosed and claimed by Applicant further amendment becomes a guessing game. Regrettably, the rules allow a final rejection

to be made only after one amendment with the PTO benefit of withholding entry of a second amendment because "it raises new issues." The applicant is thus cut off from ever being able to distinguish over the prior art to the satisfaction of the examiner without knowing the examiner's basis of his "claim reading." Otherwise, he must incur an enormous added prosecution expense.

Regarding Nelson, the examiner points to one of the wheeled carriages 145-148, namely, unit 147, and for no logical reason simply calls it "focused traction force means" when the horizontally reclining person's weight is distributed evenly over the top surfaces of all four of the disclosed wheeled units. How the examiner can allege that the person is in a "vertical traction suspension position" when using the Nelson traction assembly is not understood. But the examiner must have some kind of language in mind that for him would distinguish Applicant's invention over Nelson's teaching. Applicant's lack of understanding of the examiner's position makes it impossible to particularly point out and distinctly claim his invention to the examiner's satisfaction.

Applicant is willing to amend his claims so as to distinguish over these references none of which show a person hanging vertically suspended but reclining on an inclined surface (Chitwood); reclining on a surface that changes its angle of inclination (Burton); or reclining on a horizontal surface that oscillates (Nelson). But Applicant does not know how the examiner would be satisfied with language to distinguish over these references, which are irrelevant with respect to Applicant's invention. This is not a question of patentability over a reference but an issue related to particularly pointing out and distinctly claiming the invention under 35 U.S.C. § 112.

As understood, before final rejection is in order a clear issue should be developed between the examiner and Applicant. In Applicant's opinion, his proposed amendments clearly distinguish his claims over the prior art of record and place his claims in condition for allowance. The examiner

makes no objection to Applicant's claims under 35 U.S.C. § 112 but provides no indication one way or the other as to how Applicant can gain patent protection of his clearly distinguishable invention within a very crowded field of art.

Summary and Conclusion

Applicant's proposed amendments after final rejection more particularly point out and distinctly claim his invention under 35 U.S.C. § 112 so as to distinguish his invention over the prior art references that do not suspend a person in a vertical traction suspension position. And the prior art has no focused traction force means for applying a focused traction pressure directly to the person while vertically suspended. Applicant's proposed claim amendments clarify these distinctions between his claims and the applied prior art references without raising new issues for consideration and/or search. For this reason, Applicant's proposed amended claims are in better form for an appeal by expressly reciting limitations that are implicit and inherent in the claimed traction assembly as claimed before the final rejection.

Entry of Applicant's proposed amendment is respectfully requested for purposes of appeal.

Respectfully submitted,
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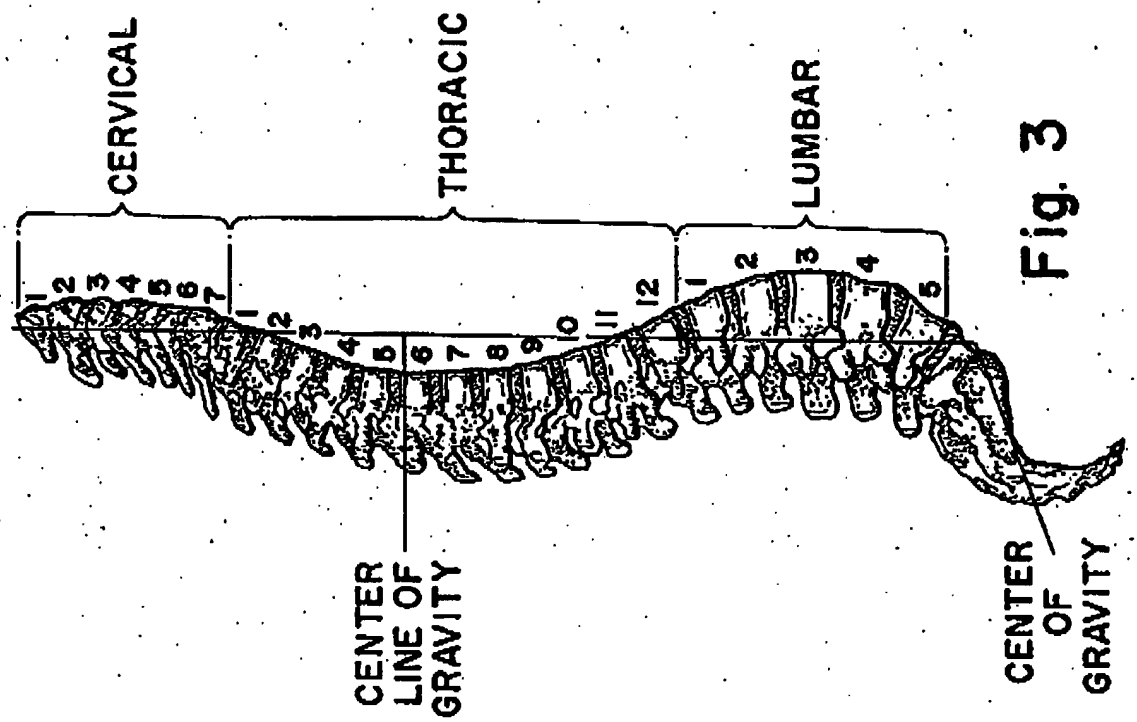

Fig. 3

THE INVENTION

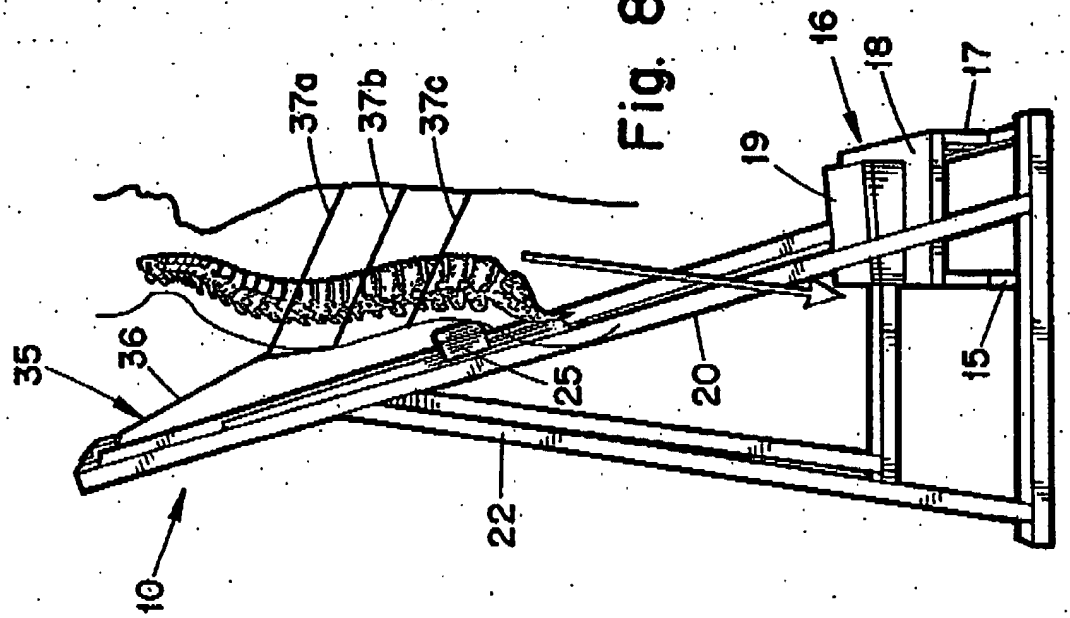

Fig. 8

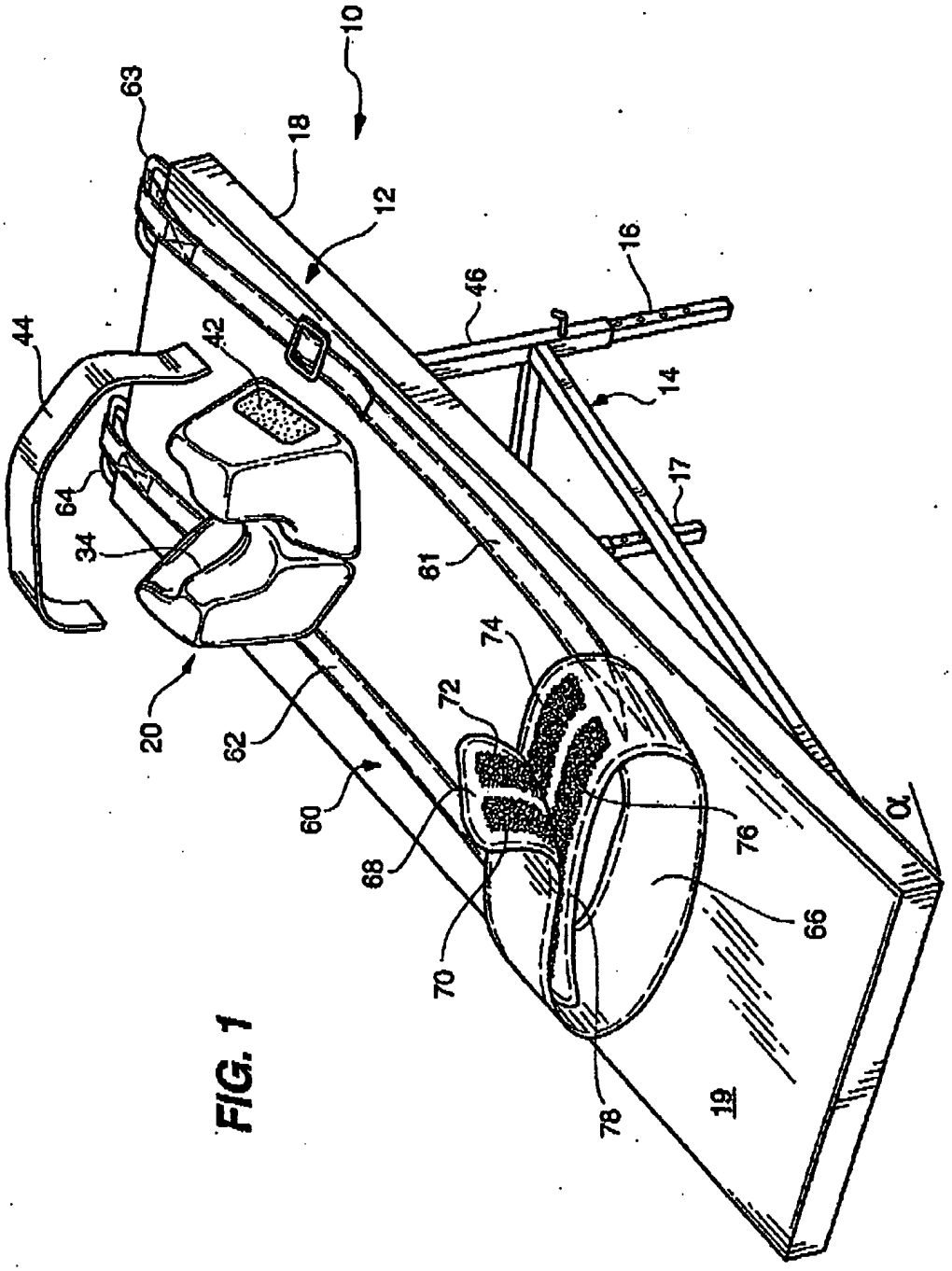

FIG. 1

CHITWOOD

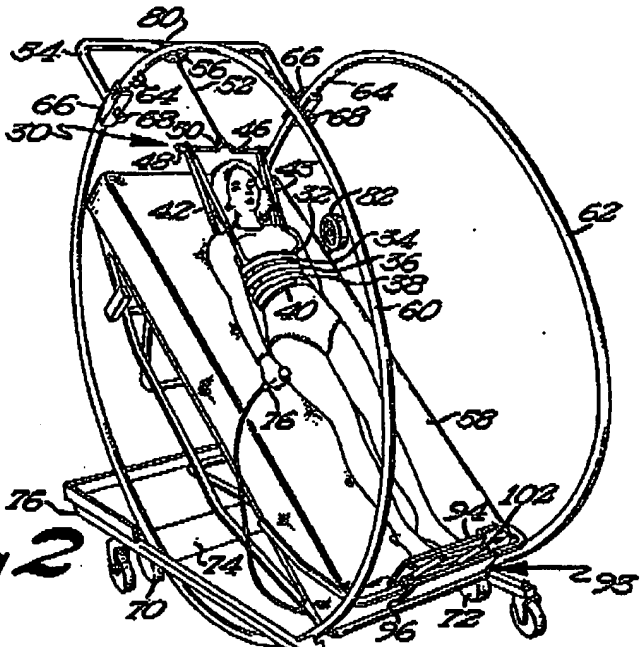

Fig 2

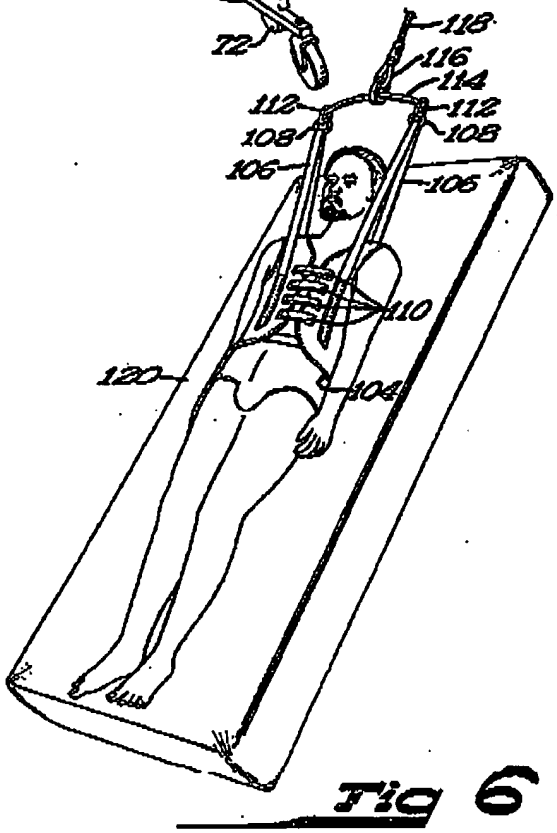

Fig 6

BURTON

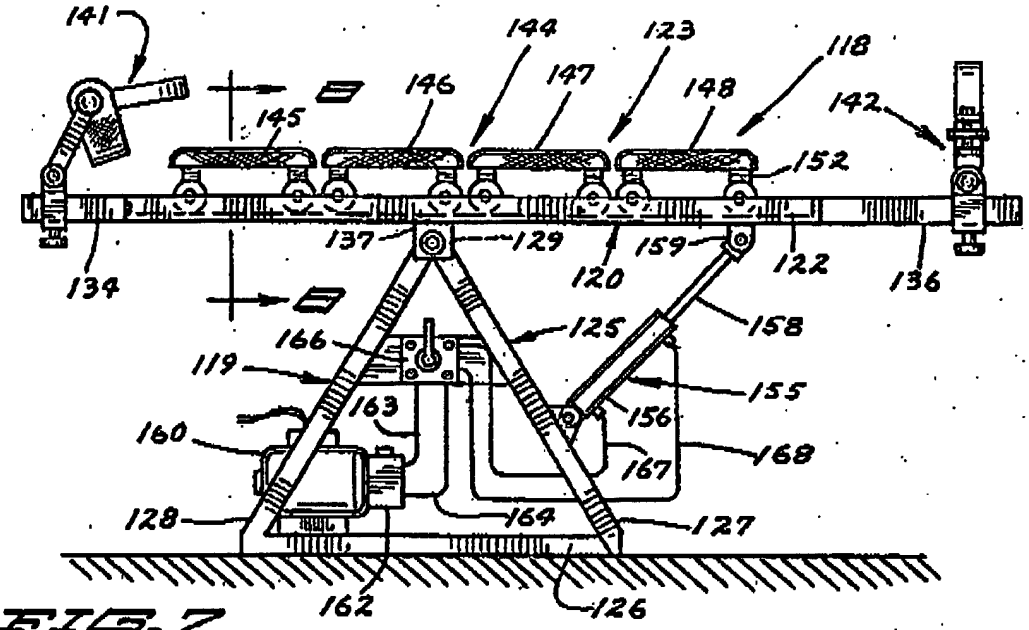

FIG. 7

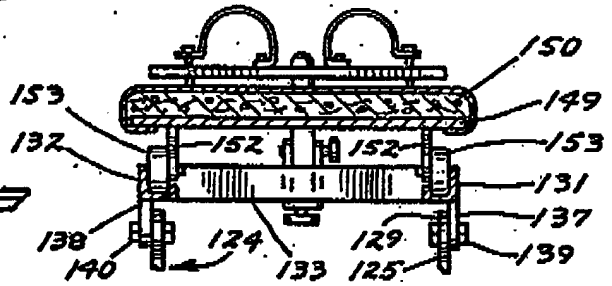

FIG. 8

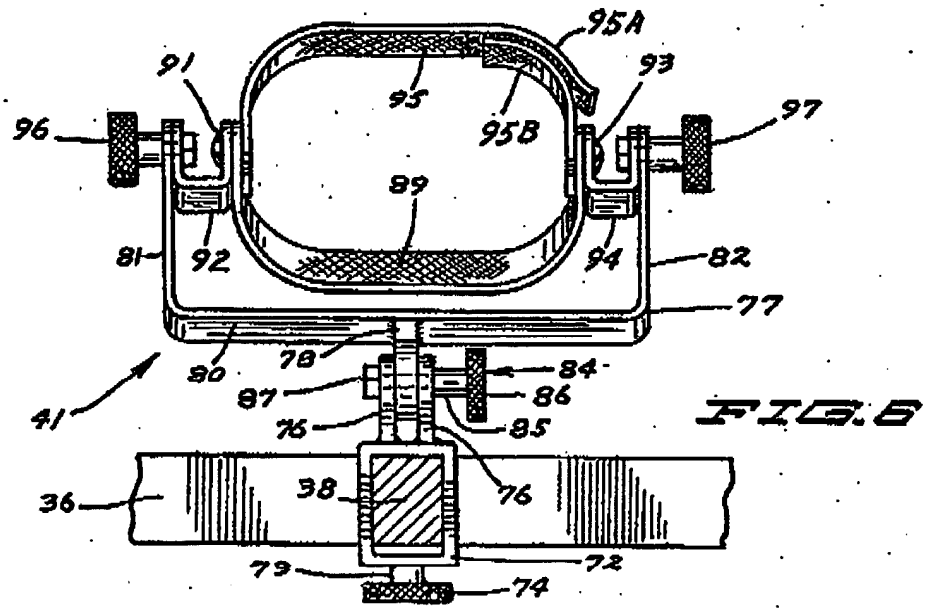

FIG. 6

NELSON